

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 1

GENERAL, LEGAL, AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 54

ADOPTION, AMENDMENTS, OR REPEAL OF RULES AND STANDARDS

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Historical note: Chapter 54 of title 12 is based upon chapter 106 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff. 7/11/74; am 6/7/76; am 8/22/77; R 7/12/82]

§12-54-1 Purpose and scope. This chapter concerns the adoption, amendment, and repeal of rules referred to as "rulemaking". This chapter is intended to comply with provisions of chapter 396 and chapter 91, HRS. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-54-2 Petition. (a) Any interested person may petition the department for the adoption, amendment, or repeal of any rule or standard by submitting a written request to the director. A copy of the request shall be submitted to the division. The request shall set forth:

- (1) The text of the rule proposed for adoption, amendment or repeal;
- (2) The reasons for and the intended effect of the proposed rulemaking;
- (3) Any facts, views, and arguments in support of the proposed rulemaking; and
- (4) The name, address, and phone number of the person making the request.

(b) The director may require the petitioner to serve other persons or governmental agencies known to be interested in the proposed rulemaking.

(c) Within thirty days of the receipt of the request, the department shall either deny the petition in writing, stating the reasons, or initiate proceedings preparatory to adoption except where federal approval or requirements prevent initiation within thirty days.

(d) If the director determines that the petition does not disclose sufficient reasons to justify the commencement of public rulemaking proceedings, or if the petition for rulemaking fails in material respect to comply with the requirements of this chapter, the director shall deny the petition and the petitioner shall be notified. The provisions of this section shall not operate to prevent the director from acting on any matter disclosed in any petition. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-54-3 Additional or alternative procedural requirements. Upon reasonable notice to interested persons, the department may prescribe

additional or alternative procedures. [Eff. 7/12/82] (Auth: HRS §396-4)
(Imp: HRS §396-4)

§12-54-4 Procedure for rulemaking. The director shall publish in a newspaper of general circulation in the State a notice of proposed rulemaking (the adoption, amendment, or repeal of a rule) at least once which shall include:

- (1) A statement of the substance of the proposed rule or the amendment or repeal and the place where a complete copy may be obtained or examined, or both;
- (2) The date, time, and place of a public hearing where interested persons may be heard, it shall be held not less than twenty days after the date of publication;
- (3) An invitation to all interested parties to submit data, views, arguments, comments, and objections orally or in writing; and
- (4) Any other information or provision deemed appropriate with regard to the proceeding. [Eff. 7/12/82] (Auth: HRS §396-4)
(Imp: HRS §396-4)

§12-54-5 Nature of hearings. (a) The public hearing shall be legislative in type. The director or a duly authorized representative shall preside over the hearing.

(b) The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record.

(c) The presiding officer shall have all the powers necessary and appropriate to conduct a fair and full hearing, including the powers:

- (1) To regulate the course of the hearing;
- (2) To dispose of procedural requests, obligations, and comparable matters;
- (3) To confine the presentations to the issues specified in the notice of hearing, or, where no issues are specified, to matters pertinent to the proposed rule;
- (4) To regulate the conduct of those present at the hearing by appropriate means;
- (5) To take official notice of material facts not appearing in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary;
- (6) In the presiding officer's discretion, to keep the record open for a reasonable stated time to receive written recommendations, supporting reasons, additional data, views, and arguments from any person who has participated in the hearing; and
- (7) The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(d) Each hearing shall be held at the time and place set in the notice of hearing, but at such time and place the hearing may be continued by the presiding officer to a later time or date or to a different place without notice other than an announcement at the hearing. [Eff. 7/12/82]
(Auth: HRS §396-4) (Imp: HRS §396-4)

§12-54-6 Decision. The director shall fully consider all written and oral submissions respecting the proposed rule or the amendment or repeal of a rule. The decision may be rendered at the public hearing or an announcement may be made as to when the department intends to make its decision. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-54-7 Emergency rules. In cases of an emergency, the department may proceed under the imminent peril provisions of chapter 91, HRS, or under the "Emergency Temporary Standards" provisions of chapter 396, HRS, as the director may determine. [Eff. 7/12/82] (Auth: HRS §396-4)
(Imp: HRS §396-4)

§12-54-8 Effective date of action on rules. The adoption, amendment, or repeal of any rule shall take effect in accordance with the provisions of chapter 91, HRS, provided that any rulemaking under the "imminent peril" provisions shall take effect in the manner provided; and that "Emergency Temporary Standards" shall take effect in the manner set forth in chapter 396, HRS. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-54-9 Construction of chapter. In case of any conflict, ambiguity, or inconsistency, chapter 91 or 396, HRS, shall supersede and control the provisions of this chapter. [Eff. 7/12/82] (Auth: HRS §396-4) (Imp: HRS §396-4)